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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,538	12/09/2003	Peter V. Uribarri	2433-000001	4561

27572 7590 05/18/2006

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EXAMINER
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BRUENJES, CHRISTOPHER P

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 05/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/731,538	<b>Applicant(s)</b> URIBARRI, PETER V.	
	<b>Examiner</b> Christopher P. Bruenjes	<b>Art Unit</b> 1772	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 28 April 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: \_\_\_\_\_.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
see continuation sheet.  
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
 13. ☐ Other: \_\_\_\_\_.

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**ADVISORY ACTION**

***REPEATED REJECTIONS***

1. The 35 U.S.C. 103 rejections of claims 1-2, 4, 5, 8, and 10-12 over Ford in view of Schnegg and Woodall are repeated for the reasons set forth in the previous Office Action mailed February 28, 2006, Pages 3-6 Paragraph 8.

2. The 35 U.S.C. 103 rejections of claims 3, 6, 9, 13-14, and 16-18 over Ford in view of Schnegg, Woodall, and Boyd are repeated for the reasons set forth in the previous Office Action mailed February 28, 2006, Pages 6-8 Paragraph 9.

3. The 35 U.S.C. 103 rejection of claim 15 over Ford in view of Schnegg, Woodall, and Keogh is repeated for the reasons set forth in the previous Office Action mailed February 28, 2006, Pages 8-10 Paragraph 10.

4. The 35 U.S.C. 103 rejections of claims 19-20 over Ford, Schnegg, Woodall, Stanhope, and Keogh are repeated for the reasons set forth in the previous Office Action mailed October 18, 2005, Pages 14-18 Paragraph 12.

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5. The 35 U.S.C. 103 rejections of claims 21-23 over Ford, Schnegg, Woodall, Stanhope, Keogh, and Boyd are repeated for the reasons set forth in the previous Office Action mailed October 18, 2005, Pages 18-22 Paragraph 13.

6. The 35 U.S.C. 103 rejections of claims 24 and 26-27 Ford in view of Schnegg, Woodall, Boyd, and Bettcher are repeated for the reasons set forth in the previous Office Action mailed February 28, 2006, Pages 10-16 Paragraph 13.

***ANSWERS TO APPLICANT'S ARGUMENTS***

7. Applicant's arguments regarding the 35 U.S.C. 103 rejections of claims 1-2, 4, 5, 8, and 10-12 over Ford in view of Schnegg and Woodall have been fully considered but they are not persuasive.

In response to Applicant's argument that there is no suggestion or motivation to substitute a weft inserted warp knit as described in Schnegg for the woven fabric of Ford, Schnegg explicitly teaches that the weft inserted warp knit as described in Schnegg is substituted for woven fabrics since they maintain the characteristics of woven fabrics but may be produced with the production speed and lower cost of knitting (col.1, 1.21-35). Since Schnegg specifically teaches that the weft inserted

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warp knit maintains the characteristics of the woven fabric, there would be suggestion to combine because the knit of Schnegg would still maintain the required characteristics of Ford while making being produced faster and cheaper. Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made that the weft inserted warp knit of Schnegg is substituted for the woven fabric of Ford since the knit of Schnegg maintains the characteristics of the woven fabric but is produced faster and with less expense.

In response to Applicant's argument that Ford teaches away from using any fabric other than fabric with spirally set filaments such as woven fabrics, Schnegg teaches that the particular characteristics that lead one of ordinary skill in the art to select woven fabrics are preserved when substituting the fabric of Schnegg for a woven fabric. Therefore, because Schnegg teaches that the knit fabric of Schnegg would maintain the characteristics of a woven fabric, which is the fabric desired by Ford, the substitution of the knit fabric of Schnegg for the woven fabric of Ford would not destroy the invention of Ford.

In response to applicant's argument that Woodall, Jr. is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not,

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then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Woodall, Jr. is reasonably pertinent to the particular problem with which the applicant is concerned, since Woodall, Jr. is concerned with forming a tubular sleeve that provides protection to an elongated body, in this case a orthopedic cast. One of ordinary skill in the art would have recognized that tubular fabric sleeves for protection of elongated bodies would have similar structure and would look to any tubular fabric sleeve and not just sleeves specifically for protecting cables and wires. This is especially true in this case, in light of the fact that the claims are directed to a generic "tubular sleeve" and not specifically to cable and wire protecting sleeves. Furthermore, although Applicant's specification does desire the claimed tubular sleeve to be used to cover wires and cables, the sleeves are being claimed without that limitation, and tubular sleeve is not specifically defined in the specification to only include covers for wires and cables. Therefore, although the claims are read in light of the specification, the broadest reasonable interpretation of tubular sleeve in light of the specification would still include sleeve

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used for other purposes besides strictly covering wires and cables.

In response to Applicant's argument that Ford, Schnegg, and Woodall fail to explicitly teach that the second yarn forming a chain stitch lap is a multifilament yarn, Schnegg teaches that any of the warp and weft yarns can be monofilament or multifilament (col.6, l.59-66). Schnegg also does not teach any of the yarns used in forming the fabric to be limited to either monofilament yarn or multifilament yarn. Therefore, it would have been obvious to one having ordinary skill in the art at the time Applicant's invention was made that any yarn used in Schnegg are monofilament or multifilament depending on the intended end result of the fabric, since Schnegg only teaches yarns in which either a mono or multiple filament structure is useable, and does not limit any of the yarns to one particular structure.

8. Applicant's arguments regarding the 35 U.S.C. 103 rejections of claims 3, 6, 9, 13-24, and 26-27 of record have been fully considered but they are not persuasive.

In response to Applicant's argument that the additional references do not remedy the deficiencies of Ford, Schnegg, and Woodall with regard to the base limitations, see the answer to

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the arguments regarding the rejections over Ford, Schnegg, and Woodall presented above.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher P. Bruenjes whose telephone number is 571-272-1489. The examiner can normally be reached on Monday thru Friday from 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Christopher P Bruenjes  
Examiner  
Art Unit 1772

CPB  
CPB  
May 15, 2006

  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
1772

5/17/06